

Hearing Date: No hearing scheduled
Courtroom Number: No hearing scheduled
Location: No hearing scheduled



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Summons - Alias Summons

(08/01/18) CCG 0001 A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

SCOTT CHMIELOWICZ

v. (Name all parties)

HORACE F. MILLER, GERARDO
MADRIGAL, and CITY OF CHICAGO

Case No. **2020L004086**

Serve: City of Chicago
c/o Anna Valencia, City Clerk
121 N. LaSalle St., Room 107
Chicago, IL 60602

SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance and pay the required fee **within thirty (30) days after service of this Summons**, not counting the day of service. To file your answer or appearance you need access to the internet. Please visit www.cookcountyclerkofcourt.org to initiate this process. Kiosks with internet access are available at all Clerk's Office locations. Please refer to the last page of this document for location information.

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Atty. No.: 56503
Atty Name: Freeman Kevenides Law Firm, LLC
Atty. for: Plaintiff, Scott Chmielowicz
Address: 120 S. State St., Ste. 200
City: Chicago
State: IL Zip: 60603
Telephone: 312-629-1901
Primary Email: bob@fklawillinois.com

Witness: _____
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DOROTHY BROWN, Clerk of Court

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 - District 4 - Maywood
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Maywood, IL 60153
 - District 5 - Bridgeview
10220 S 76th Ave
Bridgeview, IL 60455
 - District 6 - Markham
16501 S Kedzie Pkwy
Markham, IL 60428
 - Domestic Violence Court
555 W Harrison
Chicago, IL 60607
 - Juvenile Center Building
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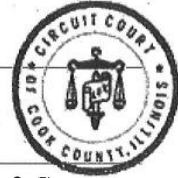
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT**

SCOTT CHMIELOWICZ,

Plaintiff,

v.

**HORACE F. MILLER,
GERARDO MADRIGAL, and
CITY OF CHICAGO,**

Defendants.

No. 2020 L 004086

AMENDED COMPLAINT AT LAW

Now comes the Plaintiff, SCOTT CHMIELOWICZ, by and through his attorneys, Freeman Kevenides Law Firm, LLC, and Amanda S. Yarusso, and complaining of the Defendants, HORACE F. MILLER, GERARDO MADRIGAL, and CITY OF CHICAGO, states as follows:

FACTS

1. On September 26, 2019, at approximately 6:15 a.m., the Plaintiff, SCOTT CHMIELOWICZ, owned, operated, maintained and controlled a bicycle traveling southeast in the marked, designated bicycle lane along and upon North Milwaukee Avenue, at or near 1034 North Milwaukee Avenue, being a public thoroughfare in the City of Chicago, County of Cook, and State of Illinois.

2. On September 26, 2019, at approximately 6:15 a.m., the Defendant, HORACE F. MILLER, owned, operated, maintained and controlled a certain vehicle that was parked or stopped facing southeast in the marked, designated bicycle lane on North Milwaukee Avenue, at or near 1034 North Milwaukee Avenue, being a public thoroughfare in the City of Chicago, County of Cook, and State of Illinois.

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3. On September 26, 2019, at approximately 6:15 a.m., the vehicle being operated by Defendant HORACE F. MILLER suddenly and without warning merged left into the lane for southeast-bound motor vehicle traffic on North Milwaukee Avenue, at or near 1034 North Milwaukee Avenue.

4. In so merging at the date and time aforesaid, the Defendant, HORACE F. MILLER, struck and collided with Plaintiff SCOTT CHMIELOWICZ and his bicycle, causing the Plaintiff to crash.

5. On September 26, 2019, the Defendant, HORACE F. MILLER, had a duty to exercise reasonable care and caution so as not to cause damage or injury to the Plaintiff herein.

6. On September 26, 2019, the Defendant, HORACE F. MILLER, was in violation of the aforesaid duty of due care, and was then and there guilty of one or more of the following careless and negligent acts or omissions:

- a) Operated a motor vehicle so that as a direct and proximate result thereof, the Plaintiff, SCOTT CHMIELOWICZ, was injured and his bicycle was damaged;
- b) Failed to keep a proper lookout for traffic lawfully proceeding on the roadway;
- c) Pulled from a stopped or parked position into traffic when such movement could not be made with reasonable safety, in violation of 625 ILCS 5/11-803 and Chicago Municipal Code Section 9-40-190;
- d) Made an improper left turn, in violation of 625 ILCS 5/11-801;
- e) Failed to exercise due care to avoid colliding with a bicyclist in the roadway, in violation of Chicago Municipal Code Section 9-40-160 and 625 ILCS 5/11-1003.1;
- f) Turned a vehicle to the left from a parked or stopped position without use of a turn signal, in violation of Chicago Municipal Code Section 9-40-200, Chicago Municipal Code Section 9-40-220, and 625 ILCS 5/11-804;
- g) Swerved his vehicle within, between, or across traffic lanes in a manner which endangered the Plaintiff, in violation of Chicago Municipal Code Section 9-40-140; and

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h) Blocked a designated bicycle lane with a parked or stopped vehicle, in violation of Chicago Municipal Code Section 9-40-060.

7. On September 26, 2019, Defendant, GERARDO MADRIGAL, a Chicago police officer, responded to the scene of the collision.

8. At the time he responded and during the course of the events described in this Amended Complaint, GERARDO MADRIGAL, was acting under color of law and in the course and scope of his employment for the City of Chicago.

9. GERARDO MADRIGAL completed a traffic crash report and issued four citations to SCOTT CHMIELOWICZ.

10. GERARDO MADRIGAL spoke only to HORACE F. MILLER regarding the details of the incident in completing the traffic crash report.

11. GERARDO MADRIGAL did not obtain an account of the collision from Plaintiff SCOTT CHMIELOWICZ, the victim of the collision and the injured party, even though GERARDO MADRIGAL knew that CHMIELOWICZ had sustained injuries and been taken to the hospital.

12. GERARDO MADRIGAL did not obtain any statements from witnesses to the collision.

13. GERARDO MADRIGAL issued four citations to SCOTT CHMIELOWICZ.

14. There was no legal or factual basis for the citations and the charges were false and were initiated without probable cause.

15. GERARDO MADRIGAL reported that SCOTT CHMIELOWICZ was the party at fault based on HORACE MILLER'S version of events.

16. HORACE MILLER is a former Chicago police officer.

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17. HORACE MILLER made a verbal statement shortly following the collision to a witness that he was a police officer and did not do anything wrong, or words to that effect.

18. HORACE MILLER and GERARDO MADRIGAL conspired together to falsely report what occurred during the collision to attempt to attribute fault to SCOTT CHMIELOWICZ and to exonerate HORACE MILLER.

19. HORACE MILLER and GERARDO MADRIGAL conspired together to falsely charge SCOTT CHMIELOWICZ with citations.

20. HORACE MILLER had committed several traffic and criminal violations prior to and during the collision, resulting in the collision, for which he was not ticketed or otherwise charged by GERARDO MADRIGAL or any other Chicago police officer.

21. SCOTT CHMIELOWICZ contested the citations that he received and the citations were all dismissed.

22. HORACE MILLER resigned from the Chicago police department in 2007 after a complaint lodged against him based on criminal conduct was sustained.

23. The other officer accused in the complaint, Aaron Pena, was found guilty by the Police Board and discharged from the police department.

24. In addition to the sustained complaint resulting in his resignation, HORACE MILLER has been accused in 31 other misconduct complaints, 10 of which have been sustained.

COUNT 1 – NEGLIGENCE - MILLER

25. Plaintiff realleges and reincorporates the above paragraphs.

26. As a direct and proximate result of one or more of the aforesaid negligent acts or omissions of the Defendant, HORACE F. MILLER, the Plaintiff was caused to sustain severe and disabling injuries, both internally and externally; that the Plaintiff has suffered, and may in

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the future suffer, great pain and anguish; that the Plaintiff has spent and become liable for, and may in the future spend and become liable for, a large sum of money for medical care and attention; that the Plaintiff was unable to, and may in the future be unable to attend to his usual duties and affairs for long periods of time, to the Plaintiff's great detriment; and that the Plaintiff was otherwise greatly injured and was caused to expend additional money as a result of said occurrence.

27. As a direct and proximate result of one or more of the aforesaid negligent acts or omissions of the Defendant, HORACE F. MILLER, the property of the Plaintiff, SCOTT CHMIELOWICZ, was greatly damaged and/or depreciated in value and said Plaintiff was obliged to repair or replace same, all to the damage of the Plaintiff.

WHEREFORE, the Plaintiff, SCOTT CHMIELOWICZ, prays for a judgment against the Defendant, HORACE F. MILLER, for a sum in excess of the minimum amount necessary for jurisdiction of this Court, for costs of this suit, and for such further relief deemed just and appropriate.

COUNT 2 - §1983 EQUAL PROTECTION - MADRIGAL AND MILLER

28. Plaintiff realleges and reincorporates the above paragraphs.

29. Defendants MADRIGAL and MILLER intentionally treated Plaintiff SCOTT CHMIELOWICZ differently than other similarly situated individuals, i.e. injured victims of a traffic collision, by falsely reporting the collision, falsely accusing CHMIELOWICZ of being at fault, and accusing CHMIELOWICZ of traffic violations without a legal basis.

30. There was no rational basis for the difference in treatment; the basis for Defendants' differential treatment of Plaintiff was the fact that MILLER was a former Chicago

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police officer and Defendants conspired together to attempt to protect MILLER from the legal and financial consequences of his wrongful actions.

31. As a result, Plaintiff suffered harm and compensable injury.

WHEREFORE, the Plaintiff, SCOTT CHMIELOWICZ, prays for a judgment against the Defendants GERARDO MADRIGAL and HORACE MILLER for compensatory and punitive damages, for Plaintiff's attorney's fees and costs of this action, and for such further relief deemed just and appropriate.

COUNT 3 - §1983 FOURTH AMENDMENT - MADRIGAL AND MILLER

32. Plaintiff realleges and reincorporates the above paragraphs.

33. Defendants MADRIGAL and MILLER falsely alleged and charged CHMIELOWICZ with traffic violations without probable cause.

34. CHMIELOWICZ's was charged, subjected to prosecution, attended a hearing to contest the citations, and suffered a deprivation of liberty as a result of the false charges.

35. As a result, Plaintiff suffered harm and compensable injury.

WHEREFORE, the Plaintiff, SCOTT CHMIELOWICZ, prays for a judgment against the Defendants GERARDO MADRIGAL and HORACE MILLER for compensatory and punitive damages, for Plaintiff's attorney's fees and costs of this action, and for such further relief deemed just and appropriate.

COUNT 4 - §1983 CONSPIRACY - MADRIGAL AND MILLER

36. Plaintiff realleges and reincorporates the above paragraphs.

37. Defendants MADRIGAL and MILLER conspired together to violate Plaintiff's constitutional rights as described in the above paragraphs and Count 2 and Count 3.

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38. Defendants acted in concert and pursuant to an agreement to deprive Plaintiff of his constitutional rights.

39. As a result, Plaintiff suffered harm and compensable injury.

WHEREFORE, the Plaintiff, SCOTT CHMIELOWICZ, prays for a judgment against the Defendants, HORACE F. MILLER and GERARDO MADRIGAL for compensatory and punitive damages, for Plaintiff's attorney's fees and costs of this action, and for such further relief deemed just and appropriate.

COUNT 5 - MALICIOUS PROSECUTION - MILLER

40. Plaintiff realleges and reincorporates the above paragraphs.

41. Defendant HORACE MILLER falsely alleged that Plaintiff SCOTT CHMIELOWICZ was the cause of the collision and falsely accused CHMIELOWICZ of various traffic violations.

42. There was no probable cause for the charges as MILLER knew that he was at fault for the collision and that CHMIELOWICZ had not committed the traffic violations.

43. MILLER's false accusations were a proximate cause of the false charges/traffic violations charged against CHMIELOWICZ and the commencement and/or continuation of the proceedings against CHMIELOWICZ.

44. MILLER's made these false accusations and caused the false charges for an improper purpose and with malice, i.e. to avoid the legal and financial consequences of MILLER's wrongdoing in violating the law and causing the collision.

45. The charges were terminated in CHMIELOWICZ's favor when they were dismissed; CHMIELOWICZ had not committed the violations and there was no legal or factual basis for the charges.

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WHEREFORE, the Plaintiff, SCOTT CHMIELOWICZ, prays for a judgment against the Defendant HORACE MILLER for compensatory and punitive damages, for costs of this action, and for such further relief deemed just and appropriate.

COUNT 6 - INDEMNIFICATION CLAIM PURSUANT TO 745 ILCS 10/9-102

46. The acts of Defendant MADRIGAL, as described in the above facts and claim were committed in the scope of employment .

47. Pursuant to the Illinois Tort Immunity Act, Defendant CITY OF CHICAGO is liable for any judgments in this case arising from Defendant MADRIGAL'S actions.

WHEREFORE, the Plaintiff, SCOTT CHMIELOWICZ, asks this Court order Defendant CITY OF CHICAGO to indemnify Defendant MADRIGAL for any judgment, attorney's fees and costs entered in this case.

FREEMAN KEVENIDES LAW FIRM, LLC

BY: _____
Brendan H. Kevenides

AMANDA S. YARUSSO

BY: s/Amanda S. Yarusso
Amanda S. Yarusso

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